

September 29, 2003

Honorable John Taufete'e Faumuina
Chief Executive Officer
LBJ Tropical Medical Center
Government of American Samoa
Pago Pago, American Samoa 96799

Dear Mr. Faumuina:

We have determined that your State's applications for Fiscal Years (FFYs) 2002 and 2003, under Part C of the Individuals with Disabilities Education Act (Part C), can be conditionally approved and are subject to the special conditions specifically identified in the Department's September 17, 2003 letter to American Samoa regarding the Single Audit Act (copy attached). The effective date of these Part C grants is September 18, 2003, the date we received a letter from the U.S. Territory of American Samoa's containing the necessary assurances specifically requested by our Office of Special Education Programs (OSEP) on September 4, 2003 to address long-standing Part C FFYs 2002 and 2003 application issues. Therefore, I am enclosing your State's Part C grant award subject to the conditions mentioned above.

The conditional approval is based on our review and acceptance of the U.S. Territory of American Samoa's Part C application for FY 2003, including:

1. Those portions of the U.S. Territory of American Samoa's existing Part C application on file with the Secretary that remain in effect;
2. The assurance from the U.S. Territory of American Samoa that the statewide system of early intervention services required by Part C and its implementing regulations is in effect, and;
3. The September 18, 2003 letter from the U.S. Territory of American Samoa to the Office of Special Education Programs, in which the U.S. Territory of American Samoa assures that it will take all steps necessary to complete revisions to its application to conform it to the requirements of Part C and specifically to:
 - (a) Use Part C funds to provide early intervention services (including transportation) only to children who are determined eligible under Part C and who have Individualized Family Service Plans (IFSPs) under 34 CFR §303.344;

- (b) Execute contracts with any potential providers who will receive any tuition assistance through the use of Part C funds under 34 CFR §§303.360(c)(1) and (2) and §303.560 and ensure that such contracts meet the applicable procurement standards and contain, at a minimum, a two-year service obligation for each year of tuition payment and a repayment provision with repayment (to the Part C agency) for all (or part, prorated by time served) of the tuition paid for that provider if the service obligation is not met;
- (c) Provide to OSEP a copy of each final signed contract containing the provisions identified in (2) above no later than 45 days after each contract is signed;
- (d) Ensure compliance in the interim with the requirements of Part C of the IDEA, the Education Department General Administrative Regulations (EDGAR) at 34 CFR Parts 76 and 80 and Office of Management and Budget Circular A-87; and
- (e) Ensure that the statewide system of early intervention required by Part C of the IDEA and its implementing regulations at 34 CFR Part 303 and the fiscal responsibility provisions of EDGAR and OMB Circular A-87 will be in effect throughout the FFYs 2002 and 2003 grant periods.

This year, a number of states have either established systems of payments or are considering establishing or revising their systems of payments. Under 34 CFR §303.173(a), each State’s Part C application must include the State’s policies and procedures that identify: (1) how it will pay for early intervention services (under 34 CFR §303.520(a)); (2) any system of payments that the State chooses to establish (under 34 CFR §303.521(a)); and (3) all funding sources (under 34 CFR §303.522). Although a State is not required under Part C to access public and private insurance available to a family, if a State requires parents under Part C to access their public and/or private insurance, the State must include this information in its Part C application as well as an assurance, under 34 CFR §303.520(b)(3)(ii), that the inability of a parent to pay will not result in the denial of any service under Part C.

States must ensure that all of the functions and early intervention services under 34 CFR §303.521(b) are carried out at public expense (i.e., no cost to the family). Additionally, under 34 CFR §303.521(c), States that provide children with disabilities under age 3 with a free appropriate public education (FAPE) under State law (i.e., birth-mandate States) must ensure that no fees are charged for the FAPE services provided to these children and their families. If a State has a system of payments under 34 CFR §303.521(a), any parent fees collected (for co-payments or other fees for services charged and received by the State’s Part C program) are “program income” under 34 CFR §80.25. Program income is not included as part of total “State and local expenditures” for purposes of a State’s meeting the non-supplanting requirements under Part C at 20 U.S.C. §1437(b)(5)(B) and 34 CFR §303.124.

Section I.C. of the FFY 2003 application for Part C funds requested updated information about

each recipient's restricted indirect cost rate to reflect compliance with restricted indirect cost rate as required under the Education Department General Administrative Regulations (EDGAR) at 34 CFR §§76.563-76.569. The American Samoa FFYs 2002 and 2003 Part C applications indicated that American Samoa has budgeted an indirect cost rate of 15.21% of salaries and fringe benefits for full-time employees only (or \$48,156) for each grant year. Part III of your Part C Application indicates that your agency will continue to apply the current restricted indirect cost rate of 15.21% until a new rate or plan is negotiated and approved by your agency's cognizant Federal agency. Please forward to us any restricted indirect cost rate that complies with EDGAR Part 76 once it is approved by your cognizant agency.

The enclosed grant awards for FFY 2002 and 2003 are made with the continued understanding that this Office may, from time to time, require clarification of information within your application and appendices, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,

/s/Patricia J. Guard for

Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosure

cc: Dr. Julia Lyons,
Part C Coordinator